

NOTICE OF PROPOSED RULEMAKING ACTION

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Article 7, Sections 8072 and 8074 Title 4, Division 11 California Code of Regulations

NOTICE IS HEREBY GIVEN that the California Pollution Control Financing Authority (the "Authority"), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code (the "Act"), proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Proposed Regulatory Action

The Authority proposes to amend Sections 8072 and 8074 of the California Code of Regulations (the "Amended Capital Access Regulations"). The Amended Capital Access Regulations revise the current regulations to be more consistent with the intent of the California Capital Access Loan Program for Small Businesses ("CalCAP" or "the Program"), i.e., assisting the financial institutions in making loans to small businesses in California. The Amended Capital Access Regulations have previously been adopted as Emergency Regulations, which will expire on February 5, 2003; this proceeding is designed to adopt them permanently.

Authority and Reference

Authority: Sections 44520 and 44559.5(f), Health and Safety Code. The Amended Capital Access Regulations are authorized by Sections 44520 and 44559.5(f) of the Act.

Reference: Sections 44559, 44559.4 and 44559.5, Health and Safety Code. The Amended Capital Access Regulations implement, interpret or make specific Sections 44559, 44559.4 and 44559.5 of the Health and Safety Code.

Informative Digest/Policy Statement Overview

Existing law authorizes the Authority to adopt necessary regulations relating to the Program (Health and Safety Code, Section 44559.5(f)). The purpose of the Amended Capital Access Regulations is to make technical adjustments to the Program's rules governing loan enrollment and loss reimbursement to ease burdens on participating financial institutions in the Program.

Existing law provides that when a financial institution decides to enroll a qualified loan under CalCAP, the financial institution shall notify the Authority within 10 days after the date on which the loan is made (Health and Safety Code, Section 44559.4(a)). Current CalCAP regulations define "the date on which the loan is made" as the earlier of two specific action dates (Section 8072(b)(1)). The Amended Capital Access Regulations would re-define "the date on

which the loan is made” to be the date loan funds are first disbursed to the borrower (which is the later of the two specific action dates in the existing Regulations).

Current CalCAP regulations state the financial institution shall notify the Authority within 60-days after any loan extension or renewal. If the financial institution fails to notify the Authority within such 60-day period, the loan is terminated from the Program (Section 8072(g)). The Amended Capital Access Regulations would delete this termination provision.

Existing law provides that the Authority shall establish procedures under which financial institutions may submit claims for reimbursement for losses incurred as a result of qualified loan defaults (Health and Safety Code, Section 44559.5(a)). Current CalCAP regulations lay out the information that must be included in a financial institution’s claim for reimbursement (Section 8074(d)). The regulations also authorize the Authority to request additional information to determine if a claim shall be paid (Section 8074(c)). The Amended Capital Access Regulations would add language to the claim for reimbursement form, stating to the effect that the financial institution certifies the loan was properly enrolled into CalCAP and is still enrolled in the Program.

**Other Matters Prescribed by Statutes Applicable
to the Specific State Agency or to any
Specific Regulation or Class of Regulations**

No other matters prescribed by statute are applicable to the Authority or to any specific regulation or class of regulations pursuant to 11346.5(a)(4) of the California Government Code pertaining to the proposed regulations or to the Authority.

Mandate on Local Agencies or School Districts

The Authority has determined that the Amended Capital Access Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Authority has determined, pursuant to Government Code Section 11346.5(a)(6), that the Amended Capital Access Regulations do not impose any additional cost or savings to any state agency or cost to any local agency or school district requiring reimbursement under Government Code Sections 17500 through 17630, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670.

Initial Determination Regarding Any Significant, Statewide Adverse Economic Impact Directly Affecting Business

The Authority has made an initial determination that the Amended Capital Access Regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Effect on Small Businesses

The Authority has determined that the adoption of the Amended Capital Access Regulations will not affect small business. Its purpose is to make administrative, technical adjustments to the Programs's rules to ease burdens on participating lending institutions in the Program.

Cost Impacts

The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the Amended Capital Access Regulations.

Assessment of Effect on Jobs and Business Expansion, Elimination or Creation

The Authority has determined, pursuant to Government Code Section 11346.3(b), that by making the Program easier for financial institutions to use, the Amended Capital Access Regulations are likely to have a positive effect on (a) the creation or elimination of jobs, (b) the creation of new businesses, and (c) the expansion of existing businesses, within the State of California.

Cost Impact on Housing

The Amended Capital Access Regulations will not have any effect on housing costs.

Reasonable Alternatives

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the Amended Capital Access Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Amended Capital Access Regulations are proposed or would be as effective and less burdensome to affected private persons than the Amended Capital Access Regulations.

The Authority invites interested persons to present statements with respect to alternatives to the Amended Capital Access Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries and any questions regarding the substance of the Amended Capital Access Regulations shall be submitted or directed to:

Karen Newquist, Program Manager
California Pollution Control Financing Authority
915 Capitol Mall, Room 457
Sacramento, California 95814
Telephone: (916) 654-5610
Fax: (916) 657-4821
Email: knewquist@treasurer.ca.gov

The following person is designated as a backup contact person for inquiries only regarding the Amended Capital Access Regulations:

Dona Yee, Analyst
California Pollution Control Financing Authority
Telephone: (916) 654-5610

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Amended Capital Access Regulations to the Authority. The written comment period on the Amended Capital Access Regulations will end at 5:00 p.m. on October 21, 2002. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority. In the event that changes are made to the Amended Capital Access Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Amended Capital Access Regulations for 15 calendar days after the date on which such Amended Capital Access Regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

Availability of Initial Statement of Reasons, Rulemaking File and Express Terms of the Proposed Amended Capital Access Regulations

Pursuant to the California Government Code, the Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Amended Capital Access Regulations. Copies of these items are available, upon request, from the Agency Contact Person designated in this Notice. This address will also be the location for inspection of the rulemaking file and any other public

records, including reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the Initial Statement of Reasons and the proposed text, may be viewed on the Authority's web site at <http://www.treasurer.ca.gov/cpcf/>.

Public Hearing

No public hearing regarding the Amended Capital Access Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Authority at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the Amended Capital Access Regulations for which the hearing is being requested.

15-Day Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested, the Authority may adopt the Amended Capital Access Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through the Authority's web site described above) for at least fifteen (15) calendar days before the Authority adopts the proposed Amended Capital Access Regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

Availability of Final Statement of Reasons

The Authority is required to prepare a Final Statement of Reasons pursuant to Government Code Section 11346.9. Once the Authority has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on the Authority's web site described above. Requests for written copies should be addressed to the Agency Contact Person identified in this Notice.